

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 466.

HENRY CRAEMER, APPELLANT,

vs.

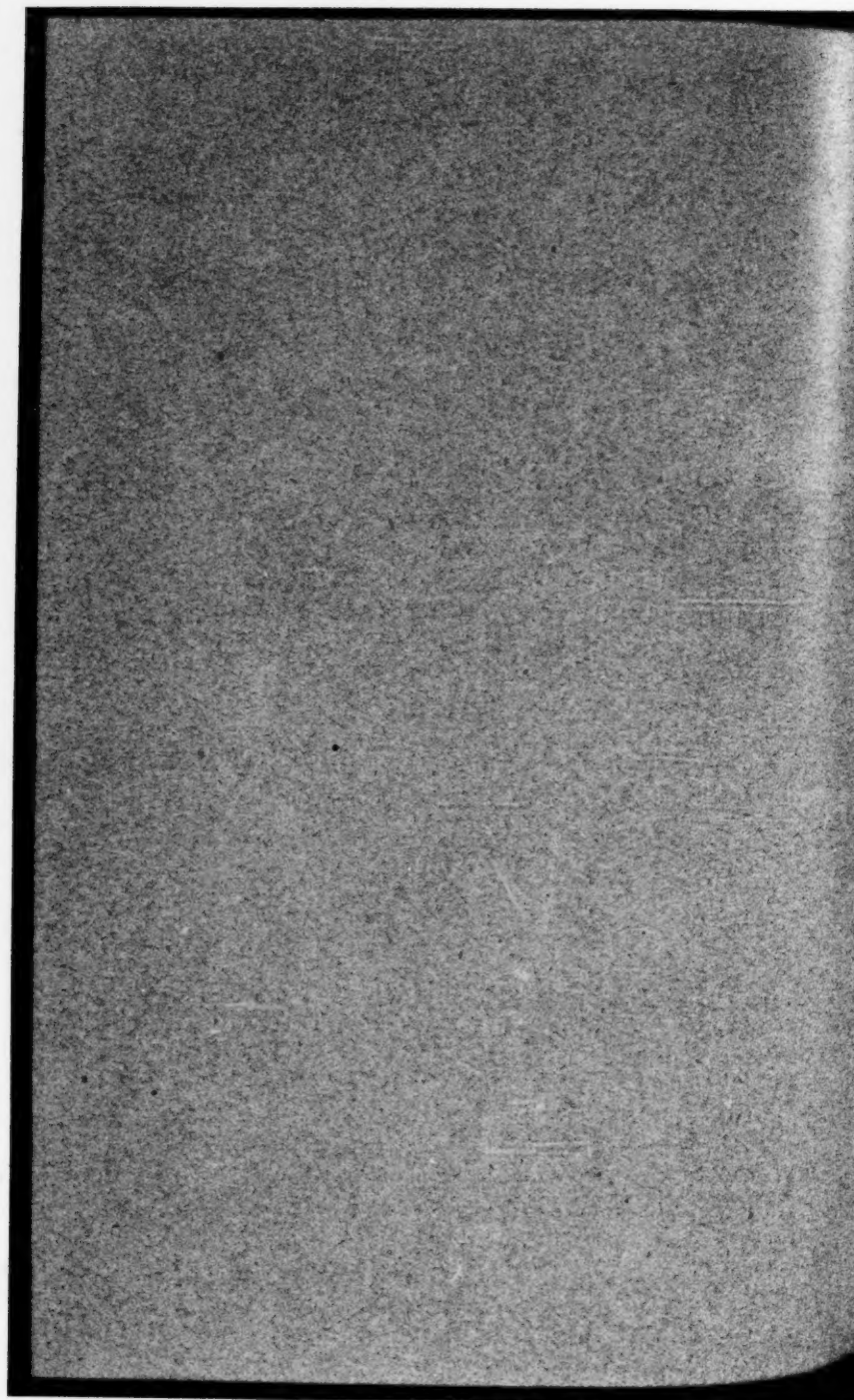
THE STATE OF WASHINGTON AND W. H. MOYER,
SHERIFF OF KING COUNTY, WASHINGTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF WASHINGTON.

FILED SEPTEMBER 27, 1897.

(16,679.)

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*vs.*THE STATE OF WASHINGTON AND W. H. MOYER,
SHERIFF OF KING COUNTY, WASHINGTON.APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
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a In the Circuit Court of the United States for the District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon.

Transcript of the Record on Appeal.

Appeal from the circuit court of the United States for the district of Washington, northern division.

1 *Petition.*

In the United States Circuit Court for the District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon.

To the honorable circuit court of the United States for the district of Washington and to the judges thereof:

Your petitioner, Henry Craemer, alleges and shows:

1. That he is a citizen and resident of the United States, residing in the county of King, at the city of Seattle, in the State of Washington.

2. That he is now against his will and without authority of law confined and restrained of his liberty and detained and unlawfully held in custody by William H. Moyer, sheriff of King county, and against his wish is being held by the said Moyer under threats by the said Moyer, as sheriff of King county, to take the life of this petitioner under alleged process and authority as hereinafter more fully stated.

3. Your petitioner further alleges that the said threat and attempt to take his life, which is set for and arranged to be, your petitioner understands, at once, and particularly in the month of July, on the day of the 23rd, is wholly without authority of law, without the jurisdiction of any court, contrary to the law, and contrary to the rights of your petitioner as a citizen of the United States under the Constitution of the United States, as will more particularly appear in matters hereafter stated.

2 4. Your petitioner informs the court that on or about the 23rd day of August, 1894, he was charged by the State of Washington by information of three separate crimes in one count, to wit, the crime of murder in the first degree, to which the penalty of death attached upon conviction; murder in the second degree, to which a penalty of not less than ten nor more than 20 years' imprisonment in the penitentiary attached, and the offense of manslaughter, to which not less than two nor more than 10 years' imprisonment in the penitentiary attached.

That your petitioner was tried upon the said information upon issue joined in the superior court of King county.

That to said issue a jury trying your petitioner did return him guilty of no greater offense than the offense of murder in the second degree, and by legal construction granting inferences and all presumptions in favor of your petitioner as accused, finding your petitioner guilty of no higher offense than that of manslaughter.

That the said jury in nowise found your petitioner guilty of murder in the first degree, to which the sentence and penalty of death could be inflicted.

That the said verdict was rendered about the 12th day of September, 1894.

5. That your petitioner appealed from the decision finding your petitioner guilty of murder in the second degree or of manslaughter to the supreme court of the State of Washington upon errors assigned, and the said judgment was affirmed.

And, further, upon the validity of the process under which your petitioner was charged, to wit, as to whether or not your petitioner could be tried upon an information for his life, your petitioner
3 appealed to the Supreme Court of the United States upon that point and that point alone, and the said Supreme Court dismissed said appeal, returning the said cause and all process to the supreme court of the State of Washington, to be dealt with as in manner and form of the law was both just and proper.

6. That at no time after the said verdict or upon any further hearing of the said cause upon appeal or pending any of its stages was ever any death warrant issued by any judge or court authorizing or assuming to take the life of your petitioner, or authorizing or assuming to order that your petitioner's life be taken, or warranting any person, sheriff or otherwise, to take the life of your petitioner. Thus there was no opportunity nor occasion to complain in the supreme court of the State or any other court as to the right to issue said death warrant or the authority for the same.

7. That at the time your petitioner was tried he was tried before the Honorable Thomas J. Humes, one of the judges of the superior court of the county of King.

That after the said cause had been disposed of in the supreme court of the State of Washington and the Supreme Court of the United States and returned to the superior court of the State of Washington for the execution of such process as would be legal in the premises the said Thomas J. Humes had ceased to be judge, the said Thomas J. Humes being the only judge who had heard the evidence in the cause and who had presided at the trial of your petitioner; and succeeding the said Thomas J. Humes came the Honorable Orange Jacobs, judge of the superior court of King county, elected and qualified.

8. That, to wit, on the 6th day of February, A. D. 1897, the
4 State of Washington moved that your petitioner be brought up for judgment and for other process against him, and moved the said Orange Jacobs, judge, to execute a warrant of death authorizing the taking of your petitioner's life for matters and things al-

leged, as was claimed in the record, to wit, upon the said verdict; and there was presented to the said judge a form of death warrant reciting matters and things in nowise true, in so far as the same assumed to recite any conviction of your petitioner of the crime of murder in the first degree; and your petitioner then and there duly objected, through his counsel, to the said Honorable Orange Jacobs assuming to pass sentence of death upon your petitioner, and particularly assuming to issue a death warrant against your petitioner ordering the taking of your petitioner's life by the said sheriff, W. H. Moyer, on the 23rd day of April, 1897, or at any time whatsoever, and duly insisted that the court was without jurisdiction to make such an order; that the same was wholly in excess of jurisdiction, was wholly in want of jurisdiction, and wholly without the authority of law, particularly was without any due process of law and was in violation of your petitioner's rights as a citizen of the United States and of the State of Washington, and particularly in violation of article 6 of the Federal Constitution of the United States, prescribing that the life of your petitioner or any other citizen shall not be taken without due process of law, and particularly in violation of article 14 of the Federal Constitution of the United States, specifically providing that no State shall by law or otherwise deny to your petitioner the right of exemption and immunity from unjust process, and particularly providing and prescribing against the taking of your petitioner's or any other citizen's life with-

5 out due process of law and save and except upon a due judgment and conviction upon which the sentence of death necessarily and as a matter of law absolutely followed, and that under the laws of the State of Washington there was no authority in the said Judge Jacobs or the said superior court or any judge thereof to order the taking of the life of your petitioner upon a construction of the process or verdict or upon assumed construction of the law, or upon any pretense or authority.

9. That notwithstanding such objections duly presented before the said judge your petitioner was nevertheless ordered to be executed by the said Judge Jacobs, and the said Orange Jacobs did assume to and did order under his hand that your petitioner shall on the 23rd day of April, being Friday, of the year 1897, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon, be executed and his life be taken under and by authority of an alleged judgment in the said cause; that there was no authority for such order, none permitted by the laws of the State of Washington, was wholly contrary to the laws of the United States and to the Constitution of the United States, and to the rights of your petitioner as a citizen of the United States.

10. That under the laws of the State of Washington there was no time allowed further to appeal the said order or cause to the supreme court of the State of Washington from the order of the said Judge Jacobs as an original cause, as the time had expired in which said cause could be taken to the supreme court upon the wrongful order and upon the said order and authority so exercised without jurisdiction.

That upon application duly made John R. Rogers, governor of the State of Washington, granted a respite to your petitioner, thus prolonging your petitioner's life and staying the execution of the death sentence for the period of ninety (90) days or until, to wit, the 23rd day of July, 1897.

That the next term of the supreme court of the State of Washington is not until the month of October, A. D. 1897, in which there would be any authority on the part of the court by any proceedings to review the unauthorized act of the said Judge Jacobs and of his honor the judge of the superior court, and as there is no law under which your petitioner can seek any stay, pending any attempt to seek relief from the supreme court of the State or from any other source, your petitioner has the only remedy left him as a citizen of the United States of appealing to this honorable court for rescue from an order seeking to take his life upon the ground that the same is wholly in excess of jurisdiction and wholly void for want of jurisdiction and without authority.

11. Your petitioner further shows that he has duly protested in everywise against the action of the said court and against the threatened action of the said sheriff, and particularly protested against that particular action which seeks in the manner and form herein stated to execute and carry out an alleged conviction and sentence thereon of your petitioner.

12. That your petitioner does not seek at the hands of the court absolute discharge unconditionally, but knowing the fact to be that an attempt to take his life is wholly in excess of jurisdiction by or upon behalf of any court of the State of Washington, and a wholly unauthorized act on the part of the sheriff of the county of King or any other person, and knowing that under the law the only offense of which your petitioner has been duly convicted and to which sentence could legally attach is the crime of murder in the second degree, and under the reasonable construction granted by the law possibly only the offense of manslaughter, and under no circumstances by any construction of the law in anywise applicable of the crime of murder in the first degree, your petitioner seeks at the hands of the court the relief under such conditions as are allowable—that is, that your petitioner either be permitted the election of accepting his sentence upon a verdict of murder in the second degree, and that in the event of a failure on the part of the State of Washington to so act that your petitioner be discharged or held upon order to retry your petitioner upon the offense alleged in the information, or that proceedings against your petitioner be held void, and the court of the State of Washington be ordered to pronounce sentence and judgment against your petitioner as under the law appertaining to convictions of murder in the second degree, and no other could be had in the premises, or that upon due hearing of the cause and upon examining the records of the cause and the evidence in the cause your honor will make an order discharging petitioner, subject to the jurisdiction of the State court to proceed against petitioner for such offense only as it appears under the law to your honor your petitioner has alone been convicted of, and

which in law and in justice alone your petitioner could be sentenced upon.

13. That, for due information of the court, your petitioner respectfully announces to the court that the journal entries and the records in the superior court of the State of Washington, in this cause, known as number 1054, be, by writ of certiorari, duly certified before your honor for inspection and investigation, that the court may be duly advised in the premises, and that your honor will grant unto your petitioner a writ of *habeas corpus* commanding your petitioner to be brought before the court at such time and place as to the court shall be convenient, whereat the court could inquire of the matters and things alleged by your petitioner, and that your honor would issue a writ of certiorari to the superior court of the county of King ordering to be duly certified to the court the records of this said cause for information, particularly the alleged information, the verdict, the judgment, and the death warrant made in the premises, and all other journal entries and orders in the cause, that your honor and the court may be informed of the premises, and that upon such record and upon hearing of the cause such further and other order can be made as in the premises will be right and proper.

And your petitioner will ever pray.

HENRY CRAEMER, *Petitioner.*

PRATT & RIDDLE,

Attorneys for Petitioner.

9 STATE OF WASHINGTON, } ss:
County of King,

Henry Craemer, being first duly sworn, on oath says that he is the petitioner herein; that he knows the matters and things set forth in the petition, and of the matters of his own knowledge says they are true, and the other matters of law he is advised by his counsel that they are true, and therefore believes the whole of said petition to be true.

HENRY CRAEMER.

Subscribed and sworn to before me this 14 day of June, 1897.

[NOTARIAL SEAL.]

S. S. LANGLAND,
*Notary Public in and for the State of
Washington, Residing at Seattle.*

Indorsed: Petition. Filed June 14, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk. by R. M. Hopkins, deputy.

10

Præcipe for Appearance.

United States Circuit Court for the District of Washington.

In re Application of HENRY CRAEMER for Writ of *Habeas Corpus*
and Relief Thereon.

To the clerk of the above-entitled court :

You will please enter our appearance as attorneys for petitioner,
Henry Craemer, in the above-entitled cause.

PRATT & RIDDLE.

Indorsed: Præcipe for appearance. Filed June 14, 1897. A.
Reeves Ayres, clerk. R. M. Hopkins, deputy clerk.

11

Order.

In the Circuit Court of the United States, District of Washington,
Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of
Habeas Corpus and Relief Thereon.

This cause coming on for hearing upon the petition of petitioner
for a writ of *habeas corpus*, the court, being advised upon the petition
and upon hearing counsel for petitioner, denies and refuses to grant
the said writ; to which ruling of the court petitioner excepts;
exception allowed.

Petitioner thereupon gives notice that he appeals from the said
ruling of the court and from the whole and every part thereof, and
appeals his said petition and his said cause and the whole and each
and every part thereof to the Supreme Court of the United States,
holding terms at the city of Washington, District of Columbia, and
to the next regular term thereof, and particularly appeals from the
said rulings of the said court denying and refusing to grant the
said writ of *habeas corpus*.

Which said appeal is here and now allowed.

Done in open court this 14th day of June, 1897.

C. H. HANFORD, *Judge*.

Indorsed: Order. Filed June 14, 1897, in the U. S. circuit court.
A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

12

Præcipe.

United States Circuit Court for the District of Washington.

In the Matter of the Application of HENRY CRAEMER for Writ of
Habeas Corpus and Relief Thereon. No. 624.

To the clerk of the above-entitled court :

You will please issue citation in the above-entitled cause.

PRATT & RIDDLE,

Att'ys for Petitioner, Henry Craemer, and Appellant Herein.

Indorsed: Præcipe. Filed June, 21, 1897. A. Reeves Ayres, clerk, A. N. Moore, deputy clerk.

13

Notice.

In the Circuit Court of the United States, District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon.

To Honorable W. H. Moyer, sheriff of King county, State of Washington:

You will take notice hereby that Henry Craemer, now in your custody, duly petitioned the United States circuit court for a writ of *habeas corpus*, seeking relief thereupon; and

Whereas the said writ and relief was denied; and

Whereas said petitioner duly moved for the right of appeal and for the transfer of his whole cause to the Supreme Court of the United States; and

Whereas the said cause came on for argument as to the granting of the said appeal and the transfer of the whole cause to the appellate court, and was heard upon the 14th day of June, 1897, by the Hon. C. H. Hanford, circuit judge; and

Whereas, after hearing said application, an order of appeal was duly granted, and the said cause was so ordered transferred to the Supreme Court of the United States, a full copy of the aforesaid proceedings and the order allowing the said appeal, being duly certified, is hereunto annexed for your information and advice; and

Whereas, under the Revised Statutes of the United States, being the laws of the United States, particularly section 766 of the said Revised Statutes reads as follows, to wit:

SEC. 766. "Pending the proceedings," etc. (section copied in full); and

Whereas the Supreme Court of the United States, *In re Jugi-ro*, 140 U. S., 295, construing the said section, defined the same to mean "in cases," etc. (copied verbatim from *Re McKane*, 61 Fed., 205 a-206), which decision is more fully referred to in the case of *In re McKane*, 61 Fed., 205, where it was held to mean that until final decision in the Supreme Court of the United States no disturbance of the condition of the prisoner as he was at the time of the denying of the writ can in anywise be had;

Therefore you are hereby notified that you are to hold possession or custody of the said petitioner, Henry Craemer, now in your keeping at the city of Seattle, county of King, State of Washington, in such manner as to your discretion shall seem meet and proper, in no wise assuming for any cause to execute any sentence of death whatsoever upon the said petitioner, Henry Craemer, and you will be duly notified of any further proceedings in the premises.

You will govern yourself accordingly.

Respectfully,

PRATT & RIDDLE,

Attorneys for Petitioner.

Indorsed: Notice of appeal. Filed June 21, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk. By A. N. Moore, deputy.

18 UNITED STATES OF AMERICA, ss :

To the State of Washington and to Hon. W. H. Moyer, sheriff of King county, State of Washington, and to Hon. Jas. F. McElroy, prosecuting attorney for King county, State of Washington, Greeting :

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within sixty (60) days from the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, wherein Henry Craemer, petitioner, is appellant and you are respondents and appellees, to show cause, if any there be, why the judgment in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of June, A. D. 1897, and of the Independence of the United States the one hundred and 21st.

[Seal U. S. C. C.]

A. REEVES AYRES,
*Clerk of the Circuit Court of the United States
for the District of Washington.*
By A. N. MOORE, *Deputy Clerk.*

Service of the within citation and copy of the same received and accepted this 23 day of June, A. D. 1897.

WM. H. MOYER,
Sheriff of King County, Washington.
JAS. F. McELROY,
Prosecuting Attorney for King County, Washington.

Indorsed: Citation. Filed July 23, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

19 *Præcipe.*

United States Circuit Court for the District of Washington.

In Re the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon. No. 624.

To the clerk of the above-entitled court :

You will please issue transcript of record on appeal in the above-entitled action.

PRATT & RIDDLE.

Indorsed: Præcipe. Filed July 23, 1897. A. Reeves Ayres, clerk. A. N. Moore, deputy clerk.

20 In the Circuit Court of the United States for the District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon. No. 624.

Clerk's Certificate.

UNITED STATES OF AMERICA, }
District of Washington, } ss :

I, A. Reeves Ayers, clerk of the circuit court of the United States, ninth judicial circuit, district of Washington, hereby certify the foregoing nineteen (19) typewritten pages, numbered from one (1) to nineteen (19) inclusive, to be a full, true, and correct transcript of the record on appeal from the circuit court of the United States for the district of Washington to the Supreme Court of the United States, wherein Henry Craemer, petitioner, is appellant, and William H. Moyer, sheriff of King county, State of Washington, and The State of Washington are respondents and appellees, and that the same constitutes the transcript of the record upon said appeal in said cause from the said circuit court of the United States for the district of Washington to the Supreme Court of the United States.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of six dollars and five cents (\$6.05), and that the same has been paid to me by Messrs. Pratt & Riddle, attorneys for petitioner and appellant in this cause.

Witness my hand and the seal of said circuit court at Seattle, Washington, this 5th day of August, A. D. 1897.

{ Seal United States Circuit Court, District of Washington, }
Northern Division. }

A. REEVES AYERS, *Clerk*,
By R. M. HOPKINS,
Deputy Clerk.

21 UNITED STATES OF AMERICA, ss :

To the State of Washington and to Hon. W. H. Moyer, sheriff of King county, State of Washington, and to Hon. Jas. F. McElroy, prosecuting attorney for King county, State of Washington, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within sixty (60) days from the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, wherein Henry Craemer, petitioner, is appellant, and you are respondents and appellees, to show cause, if any there be, why the judgment in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of June, A. D. 1897, and of the Independence of the United States the one hundred and 21st.

{ Seal United States Circuit Court, District of Washington, }
Northern Division. }

A. REEVES AYRES,
Clerk of the Circuit Court of the United States
for the District of Washington,
By A. N. MOORE, *Deputy Clerk.*

[Endorsed:] In the U. S. Supreme Court. Henry Craemer *vs.* Wm. H. Moyer. Citation. Filed July 23, 1897. In the U. S. circuit court. A. Reeves Ayres, clerk, A. N. Moore, deputy.

Service of the within citation and copy of the same received and accepted this 23 day of June, A. D. 1897.

WM. H. MOYER,
Sheriff of King County, Washington.
JAS. F. McELROY,
Prosecuting Attorney for King County, Washington.

Endorsed on cover: Case No. 16,679. Washington C. C. U. S. Term No., 466. Henry Craemer, appellant, *vs.* The State of Washington and W. H. Moyer, sheriff of King county, Washington. Filed September 27, 1897.